

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

1.	BRIAN ZALEWSKI,	)	
		)	
	Plaintiff,	)	
		)	
v.		)	Case No. <u>CIV-21-798-JD</u>
		)	Grady County
1.	THE CITY OF CHICKASHA,	)	Case No. CJ-2021-127
	Oklahoma, a municipal corporation,	)	
		)	
	Defendant.	)	

**NOTICE OF REMOVAL**

Defendant, the City of Chickasha, gives notice that this action is removed from the District Court of Grady County, Case No. CJ-21-127, to the United States District Court for the Western District of Oklahoma pursuant to 28 U.S.C. §1441 (a) and (c) and §1446 (a) and (b). In support of this Notice of Removal, Defendant states as follows:

1. On July 21, 2021, Plaintiffs filed this action against the Defendant in the District Court of Grady County, Case No. CJ-21-127. Pursuant to Local Rule 81.2, a copy of the state court docket sheet is attached to this Notice as Exhibit 1. Copies of all documents and pleadings filed and served in this case and of record in the District Court of Grady County are attached to this Notice as Exhibits 2 (Petition) and 3 (Summons).

2. Plaintiff's Petition (Exhibit 2) asserted that Plaintiff was wrongfully terminated as the City's Fire Chief in retaliation for exercising free-speech rights protected under the First Amendment and under the Oklahoma Constitution.

3. However, the only basis for assertion of a free speech claim is under the First and Fourteenth Amendments to the United States Constitution, assertable pursuant to 42 U.S.C. §1983.

4. There is no legal basis for assertion of a claim under the Oklahoma Constitution. The Oklahoma Supreme Court held in *Barrios v. Haskell Cty. Pub. Facilities Auth.*, 2018 OK 90, 432 P.3d 233 that the provisions of the Oklahoma Governmental Tort Claims Act, 51 O.S. § 151 *et seq.* (GTCA) foreclose any claim under the Oklahoma Constitution such as the claim asserted by Plaintiff herein. In *Barrios*, the Court clarified that claims for alleged violation of the Oklahoma Constitution are common law torts which therefore can be limited or abrogated by the Oklahoma Legislature in the GTCA. Section 155(1) of the GTCA specified that a governmental entity's "immunity from suit extended even to torts arising from alleged deprivations of constitutional rights." *Barrios*, 2018 OK 90, ¶ 10, 432 P.3d at 238.

5. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 since federal law, specifically the First and Fourteenth Amendments to the United States Constitution, assertable pursuant to 42 U.S.C. § 1983 is the basis for relief for the First Amendment claim asserted in the Petition. Venue is proper in this Court since Plaintiffs and Defendant are located within the Western District of Oklahoma.

6. The Petition purports to assert a *Burk* tort claim under Oklahoma law against the Defendant; that claim is so related to the above-described federal claim that it forms part

of the “same case or controversy” and thus falls within this Court’s original jurisdiction pursuant to 28 U.S.C. §1367.

8. Service of process was made on Defendant on July 26, 2021 (Exhibit 3). This Notice of Removal is filed within thirty (30) days of service on the Defendant of a pleading containing grounds for removal pursuant to 28 U.S.C. 1446(b). Accordingly, this Notice of Removal is timely filed.

9. This Notice of Removal will be timely filed with the Clerk of the Court for the District Court of Grady County pursuant to 28 U.S.C. §1446(d).

Respectfully submitted,

/s/ Margaret McMorrow-Love

Margaret McMorrow-Love, OBA No. 5538

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***Attorney for Defendant***

### **CERTIFICATE OF SERVICE**

I certify that on August 16, 2021, the forgoing pleading was electronically filed with the Clerk of the Court using ECF System and notice will be given to all counsel of record via the ECF System:

Mark Hammons  
325 Dean A. McGee Avenue  
Oklahoma City, OK 73102

/s/ Margaret McMorrow-Love

Margaret McMorrow-Love